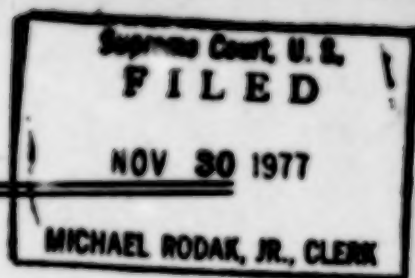


**APPENDIX**



**In the Supreme Court**

**OF THE  
United States**

**OCTOBER TERM, 1976**

**No. 76-1410**

**JOSEPH V. AGOSTO, *Petitioner,***

**VS.**

**IMMIGRATION AND NATURALIZATION SERVICE,**

**On Writ of Certiorari to the United States Court of Appeals  
for the Ninth Circuit**

**Petition for Certiorari Filed April 12, 1977  
Certiorari Granted October 17, 1977**

**In the Supreme Court**  
**OF THE**  
**United States**

—  
OCTOBER TERM, 1976  
—

No. 76-1410  
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JOSEPH V. AGOSTO, *Petitioner,*

VS.

IMMIGRATION AND NATURALIZATION SERVICE,  
—

On Writ of Certiorari to the United States Court of Appeals  
for the Ninth Circuit  
—

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\*Decision of the Board of Immigration Appeals dated April 4, 1975 appears as Appendix B to the Petition For Certiorari. Memorandum Decision of the Court of Appeals and Order of the Court of Appeals denying Petition For Rehearing appears as Appendix A to the Petition For Certiorari.

**CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES**

May 7, 1975—Petitioner Agosto's Petition For Review of a Deportation Order of the Immigration and Naturalization Service and For Transfer To The United States District Court For Hearing de novo filed in U.S. Court of Appeals for the Ninth Circuit.

July 25, 1975—Filed Petitioner's Brief.

October 20, 1975—Filed Petitioner's Supplemental Brief.

January 6, 1976—Filed Respondent's Brief.

January 28, 1976—Filed Petitioner's Reply Brief.

April 19, 1976—Filed Petitioner's Supplemental Reply Brief.

January 19, 1977—Filed order pursuant to Rule 3a of the Rules of the Ninth Circuit, classifying this case as one in which the questions raised on appeal are, in the unanimous opinion of the panel, of such a nature that oral argument would not be of assistance. Therefore, the case is ordered submitted to the Court for decision without oral argument on January 24, 1977, in San Francisco, CA.

January 24, 1977—Ordered memorandum, Hufstedler dissenting, filed and judgment to be filed and entered.

January 24, 1977—Filed memorandum—affirmed.

January 24, 1977—Filed and entered judgment.

February 7, 1977—Filed Petition For Rehearing and Stay of Mandate, with suggestion for rehearing in banc.

March 23, 1977—Filed Order denying the petition for rehearing and rejecting the suggestion for rehearing in banc.

March 25, 1977—Filed Petitioner's Motion For Stay of Mandate.

March 30, 1977—Filed Order staying the issuance of the mandate to April 22, 1977.

United States Department of Justice  
Immigration and Naturalization Service

In Deportation Proceedings under Section 242 of the  
Immigration and Nationality Act

File No.: A17 038 159

UNITED STATES OF AMERICA:

In the Matter of  
Vincenzo Pianetti aka Joseph Vincent  
Agosto, Vincenzo Di Paola,  
Respondent.

ORDER TO SHOW CAUSE AND  
NOTICE OF HEARING

To: Vincenzo Pianetti, 9190-MC (known as Joseph  
Vincent Agosto), U. S. Penitentiary, McNeil  
Island, Washington

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and  
Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Italy  
and a citizen of Italy;
3. You entered the United States at an unknown  
port on or about December 11, 1966;

(date)

See Continuation Sheet attached hereto and  
made a part hereof.

AND on the basis of the foregoing allegations, it is  
charged that you are subject to deportation pursuant  
to the following provision(s) of law:

Wherefore You Are Ordered to appear for hearing  
before a Special Inquiry Officer of the Immigration  
and Naturalization Service of the United States De-  
partment of Justice at U. S. Penitentiary, McNeil  
Island, Washington on September 28, 1967 at 10:30  
a.m., and show cause why you should not be deported  
from the United States on the charge(s) set forth  
above.

Immigration and Naturalization Service  
John P. Boyd, District Director  
(Signature and title of Issuing officer)

Seattle, Washington  
(City and State)

Dated: September 5, 1967

Continuation Sheet

4. You then presented yourself for admission as  
Joseph Vincent AGOSTO, a citizen of the  
United States, and presented a United States  
passport in proof thereof;
5. You were not then a citizen of the United  
States;
6. You did not then present yourself for ad-  
mission as an alien;
7. You were not inspected as an alien by a  
United States Immigration officer;
8. You have never been inspected and admitted  
to the United States as an alien;

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, you entered the United States without inspection.

United States Department of Justice  
Immigration and Naturalization Service

File: A17-038-159—Seattle, Washington

In Deportation Proceedings

<p>In the Matter of Vincenzo Pianetti also known as Vincenzo Di Paola, or Joseph Vincent Agosto, Respondent.</p>
--

[April 19, 1968]

Charges:

I & N Act—Section 241(a)(2)—Entry without inspection.

Application: None.

In Behalf of Respondent:

Irving Clark, Jr., Attorney  
334 Fairview Avenue North  
Seattle, Washington 98109

In Behalf of Service:

B. G. Greenwald  
Trial Attorney  
Seattle, Wash.

DECISION OF THE  
SPECIAL INQUIRY OFFICER

The respondent is a 40 year old married male who is charged in the order to show cause with being an alien, a native and citizen of Italy, who entered the United States without being inspected as an alien



and therefore is deportable under the provisions of Section 241(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(2)).

The respondent denies all the allegations in the order to show cause with the exception of Allegations 6, 7, and 8. He admits then that at the time of entry to the United States he did not present himself for admission as an alien, was not inspected as an alien, and that he has never been inspected and admitted to the United States as an alien. The burden of proof is on the Immigration Service to establish by clear, convincing and unequivocal evidence that the facts alleged as grounds for deportation are true<sup>1</sup>.

The Government claims that the respondent is Vincenzo Di Paola Pianetti, a native of Italy and an alien. The respondent avers that although he used those names until about 1950, that he is in fact Joseph Agosto, a native of Cleveland, Ohio who was taken to Italy as a young boy.

The single issue in this case is one of identity. If the respondent prevails he is a citizen of the United States and the Government has no jurisdiction in deportation proceedings, since deportation proceedings are limited to aliens, persons who are not citizens or nationals of the United States<sup>2</sup>. If the Service prevails the respondent is an alien and is by his own admission one who entered the United States without inspection and as such is deportable.

<sup>1</sup>*Woodby v. Immigration and Naturalization Service*, 385 U.S. 276, 87 S.Ct. 483, 17 L. Ed. 2d 362, December 12, 1966.

<sup>2</sup>Section 101(a)(3), Act of 1952, 8 U.S.C. 1101(a)(3).

The record is extensive, containing numerous documentary exhibits, the testimony of the respondent and the testimony of one witness. Succinctly, the facts emerge as follows: the respondent was born of undisclosed parents at Agrigento, Sicily, Italy, July 17, 1927. He was entrusted to the care of the Porrello family as an infant and at age fifteen he was put under their guardianship by order of the court and given the name Vincenzo Pianetti. Prior to that time, as was the custom with persons of unknown parentage, they were given the name of the saint whose feast day fell on the date of their birth, consequently the respondent was named for St. Vincent de Paul and was called Vincenzo Di Paola. Pianetti was married at the age of seventeen. He acquired a police record and was convicted on several occasions. In October 1951 he was convicted and sentenced to imprisonment and the sentence was suspended for five years. A month later he obtained an Italian passport and a visa to enter Canada as a visitor. No record of his admission to the United States is available. The only evidence is his testimony that he entered from Mexico, which according to his recollection was about 1950, and that at that time he presented a copy of a delayed birth certificate relating to Giuseppe Agosto, born at Cleveland, Ohio August 30, 1921, furnished to him by an uncle who had told him that it related to his birth. With this certificate he obtained a United States citizen passport and has since been known by the name of Joseph Agosto.

Although the respondent maintained that his origin was a mystery, the Government presented evidence

from the Provincial Institute of Assistance to Infancy, Agrigento, Sicily, Italy (Ex. 22) showing that their records disclosed the birth of Vincenzo Di Paola on July 16, 1927 at 4:00 A.M., and showing him to have been baptized on July 18, 1927. There is a record to show that the civil registry of births of Agrigento shows this infant, for official purposes, to have been born on July 17, 1927, according to Act #461. The records of that Provincial Institute further show that Vincenzo Di Paola was affiliated April 15, 1943 by the couple Pietro Pianetti and Crocifissa Porrello. This document is labelled a certificate of baptism. The respondent testified (p. 71) that he had the name Vincenzo Di Paola at birth because he was declared in the Municipality of Agrigento on the 17th or 19th of July, and it was the Feast of St. Vincent De Paul and "they gave me that name because I was of unknown parentage", and that in order to proceed with the affiliation or adoption by the Pianetti's the name was imposed on him; that he used the name Di Paola for a while and the name Pianetti, the latter after he was affiliated or under the guardianship of the Pianetti's (tr., pp. 70-71).

Exhibit 22 standing alone would not be conclusive, but when viewed in the light of all the respondent's testimony and the numerous foreign records,<sup>3</sup> the respondent's origin and identity are not in doubt.

<sup>3</sup>Authenticated or certified foreign documents are admissible in evidence, *Ventura v. Shaughnessy*, 219 F. 2d 249. Even if not authenticated or certified they may have probative value if uncontradicted, *Smith v. Curran*, 12 F. 2d 636; *Impasto v. O'Rourke*, 211 F. 2d 609, 8th Circuit, 1953, cert. den. 348 U.S. 827; *Williams v. Mulcahey*, 250 F. 2d 127, 6th Circuit, cert. den. 356 U.S. 946.

Exhibit 20 recites that according to the records of the Istituto Provinciale di Assistenza all'Infanzia (Provincial Institute of Assistance to Infancy), Vincenzo Di Paola was entrusted to the care of Mr. and Mrs. Pietro Pianetti one month after birth and formally affiliated in 1943. The fact that this shows the respondent's origin is recorded in the Municipality of Agrigento, Bureau of Civil Registry, according to Exhibit 4, which is entitled "Birth Certificate—Vincenzo Di Paola". This document, which is accompanied by an English translation, is a certified copy of records of that government agency in Italy and contains the stamp of the Attorney General for the Republic, and the signature of the registrar is authenticated by that official, and the American Consul at Palermo certified to his official signature and character. This document recites that Vincenzo Di Paola was born July 17, 1927 at Agrigento; that he was affiliated by Pietro Pianetti and Crocifissa Porrello and given the name Vincenzo Pianetti by order of the Surrogate in Licata on April 15, 1943; and that it was entered in the records of birth of the municipality. It further stated that this same Vincenzo Pianetti, who presented a copy of his birth certificate on November 19, 1944 was married at Palermo to Anna Pasqua Vince Vicis, and that the official records in the custodianship case of Vincenzo Pianetti were opened upon official request October 24, 1968. This document also contains the statement of the Attorney General attached to the Court of Appeals at Palermo that he had verified the signature of the registrar of



the Civil Registry at Agrigento, and the document is endorsed by the American Consul to show that the custodian of the records occupies that official position.

Exhibit 5 is a birth certificate of Vincenzo Pianetti as shown by the records of the registrar of the Civil Registry for the Municipality of Agrigento, and the signature of the registrar of the Civil Registry is authenticated by the Assistant Attorney General for Palermo and the Ministry of Foreign Affairs in Rome authenticated the signature of the Assistant Attorney General. The American Consul in turn certified to the signature of the Ministry of Foreign Affairs.

Exhibit 6, an English translation of the records of the Municipality of Palermo, is an extract from the registers of marriage records reciting that Vincenzo Pianetti, age seventeen, of Pietro and Crocifissa Porrello, born in Agrigento, married Anna Pasqua Vices Vinci, age twenty three, a native of Naples, on November 19, 1944. The signature of the custodian of the records is authenticated by the Attorney General for the Republic attached to the Court of Appeals in Rome, whose signature in turn is authenticated by the Ministry of Foreign Affairs, and there is attached a certificate by the American Consul certifying to the signature of the Minister of Foreign Affairs.

Similarly authenticated is Exhibit 7, showing the family status of the respondent's wife, Anna Vices Vince, showing her to be married to Vincenzo Pianetti, showing the birth of a daughter Flora and a daughter Gioconda Crocetta in 1945 and 1946, respectively.

There was introduced into evidence an affidavit of the respondent's wife, Anna Vices Vinci, identifying the photograph of Vincenzo Pianetti, the respondent, acknowledging that she was married to him as the records show, and that he is the same Vincenzo Pianetti born in Agrigento, Italy July 17, 1927, the son of Pietro and Crocifissa Porrello (Ex. 9).

Exhibit 10 is an affidavit of the respondent's daughter, Crocetta Gioconda Pianetti, identifying the photograph as Vincenzo Pianetti who she last saw in Anchorage, Alaska. That affidavit is dated July 14, 1967. The respondent testified that he was married to Anna Vinci Vices as the records show and that he had two daughters named as shown by the records, and that his daughters had visited him at Anchorage and Seattle.

Exhibit 12 is a criminal record and order of incarceration of a person sentenced. It recites the date and place of the respondent's birth and is authenticated by the Attorney General's office in Italy and certified by the Ministry of Foreign Affairs whose signature is in turn authenticated or certified by the American Consul.

Exhibit 11 is a record from the police headquarters at Agrigento which contains entries relating to the criminal record of Vincenzo Pianetti and states the date and place of his birth. It is authenticated in the same manner as the previous documents, by the Attorney General's office, the Ministry of Foreign Affairs, and the American Consul.



The respondent was given an opportunity to test this evidence by depositions but did not avail himself of the opportunity. The respondent has presented no credible evidence to show that he is not the person whom the Government claims him to be. He presented his Social Security records showing that his earnings commenced in 1951 (Ex. 28). Exhibit 29 is a certificate of marriage evidencing the fact that he was married July 28, 1953 at Anchorage, Alaska to Leota Estelle Richards. He entered into this marriage under the name of Joseph Agosto and it is noted that the exhibit shows that he was married in the Catholic Church and that he had no previous marriages. The church authorities were evidently unaware of the fact that he had previously been married in Italy as Vincenzo Pianetti, because Exhibit 30, a baptismal certificate of Joseph Agosto, shows that it was obtained for the purpose of establishing his baptism for church authorities. Although this evidence has no bearing upon his identity, it does not commend him for his veracity.

The respondent introduced into evidence as Exhibit 31 a statement from the Bureau of Vital Statistics of the Municipality of Agrigento, Sicily, Italy dated August 4, 1967, the first paragraph of which recites that in the registers of births in that municipality from 1921 to 1927 there is no registration of a birth of one Vincenzo Pianetti, the son of Pietro and Crocifissa Porrello. Based upon the evidence introduced by the Government this would appear to be quite obvious as the birth register shows, as is ex-

plained in Paragraph 2 of the exhibit, that Pianetti's birth was registered in the name of one Vincenzo Di Paola, of unknown parents, all of which is consistent with the testimony of the respondent referred to above. The respondent also introduced as Exhibit 33 a statement from the Registrar of Vital Statistics at Licata, Italy stating the manner in which the Bureau of Vital Statistics registers orphans. This would appear to have no application to the respondent's case as it has been established that his birth was registered at Agrigento.

The other evidence the respondent presented was a birth certificate of Giuseppe Agosto, or Joseph Agosto, whose name he is now using. This is identified as Exhibit 24. It is a copy of a delayed birth certificate of Joseph Agosto. There is nothing to identify the respondent with this birth certificate except his self-serving testimony that it was mailed to him by an uncle, since deceased, in about 1948 or thereafter. The Government, on the other hand, has presented evidence from Joseph Agosto's sister, who still resides in Italy (Ex. 13), stating that the person who the respondent claims to be died in Licata, Italy on December 14, 1951. Exhibit 14 is a record from the Municipality of Licata, Province of Agrigento, confirming that testimony. It is a record of death of Giuseppe Agosto.

All of the foregoing evidence identifies the respondent as Vincenzo Di Paola and later Vincenzo Pianetti, who was born in 1927 in Agrigento, Sicily, Italy, and who maintained that identity for twenty five years

until he came to the United States in 1951 or early 1952. Although he has had ample opportunity, he has presented no credible evidence that he is Joseph Agosto born in Cleveland, Ohio in 1921. The Government has presented records of the State Department relating to Giuseppe Agosto or Joseph Agosto in connection with passport applications and an adjudication of citizenship, which clearly shows that he is not the same person as the respondent. It is clear from all the evidence that the respondent, after gaining entry to the United States under his identity, had passports issued to him in the false identity and passed himself off as a citizen of the United States.

The Government concedes that the Joseph Agosto who was born in Cleveland, Ohio returned to Italy as a child. Examination of the respondent concerning his early background resulted only in eliciting evasive answers about his early life in Italy, his schooling and other activities. It is inconceivable that he could concede that he was the Vincenzo Pianetti to whom all these records relate and still claim that he is also Joseph Agosto who was born in Cleveland, Ohio. The records presented here with respect to the lives of the two establish that they could not be one and the same person. Agosto was seven years older than the respondent. There is no record of his having married or having had children. He was a student. He had attempted to return to the United States but was refused a passport because it was felt that he may have lost his United States citizenship by his long residence in Italy. The respondent knew that this

passport had been refused and testified that for this reason he obtained the Italian passport to come to Canada in his own name because he knew if he applied for a passport at the American Consulate in Italy, at least in Palermo, he would be refused (tr., p. 45).

During the hearing the respondent maintained that his marriage in Italy had been annulled although other evidence in the record shows that he had merely obtained a legal separation. He presented what he referred to as a copy of the decree of annulment in the Italian language. The document was excluded because he did not present an English translation. Although he declared during the hearing that the document together with the English translation would be presented, the evidence was not forthcoming. He also testified that he had obtained a divorce in Mexico from his Italian wife prior to his marriage in Alaska. He was unable to furnish a copy of a divorce decree and promised that such evidence would be forthcoming and it was not presented. Although he and his wife testified that they were married, no documentary evidence of this union was presented in evidence. The respondent was given an opportunity to apply for discretionary relief from deportation and no application was presented within the time specified.

On the basis of all the evidence I find that the charge in the order to show cause has been sustained by clear, convincing and unequivocal evidence. The respondent has designated Italy as the country to which he wishes to go in the event he is deported from

the United States. Accordingly, an order of deportation to Italy will be entered.

ORDER: It is ordered that the respondent be deported from the United States to Italy on the charge contained in the order to show cause.

/s/ John W. Keane  
John W. Keane  
Special Inquiry Officer

United States Department of Justice  
Board of Immigration Appeals

File: A-17038159—Seattle

In Deportation Proceedings

In re:  
Vincenzo Pianetti aka Vincenzo Di  
Paola or Joseph Vincent Agosto

[Jul 25 1968]

Appeal

On Behalf of Respondent:

Irving Clark, Jr., Esq.  
334 Fairview Avenue North  
Seattle, Washington 98109  
(Case scheduled for oral  
argument on June 26, 1968  
but counsel did not appear;  
brief filed)

On Behalf of I&N Service:

C. B. Doughty  
Regional Counsel  
(Brief filed)

Charges:

Order: Section 241(a)(2), I&N Act (8 USC 1251  
(a)(2))—Entry without  
inspection



Lodged: None

Respondent appeals from the order of the special inquiry officer requiring his deportation on the charge stated in the caption. The Regional Counsel, Northwest Regional Office filed a motion with the Board asking that if it affirms the finding of deportability it remand the case to the special inquiry officer with directions to reopen the deportation hearing to find if the respondent's marriage is valid, and if it is, whether he is nondeportable under 8 USC 1251(f) of the Act. The motion states that respondent's wife has filed a suit in the United States District Court, Western District of Washington, Southern Division, case No. 3728, for a declaration that the respondent is her lawful husband and that the two children of the union are legitimate.

We shall remand proceedings without reviewing the case on the merits. All the facts should be before us before a review on the merits is made.

ORDER: It is ordered that the case be returned to the special inquiry officer for further proceedings not inconsistent with we have stated in our discussion.

It Is Further Ordered that the order of the special inquiry officer be certified to the Board.

/s/ Thos. G. Finucane  
Chairman

United States Department of Justice  
Immigration and Naturalization Service

UNITED STATES OF AMERICA:

In Deportation Proceedings under Section 242  
of the Immigration and Nationality Act

File No. A17038159

<p>In the Matter of Vincenzo Pianetti, aka Vincenzo di Pietro Pianetti, aka Joseph V. Agosto, Respondent.</p>
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ADDITIONAL CHARGES OF DEPORTABILITY

To: Mr. Vincenzo Pianetti  
(name)

.....  
(address)

There is hereby lodged against you the additional charge(s) that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

Section 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who have been convicted of a crime involving moral turpitude, under sec. 212(a)(9) of the act, to wit: forgery, fraud, and false statement in Federal Housing Administration Transaction.



In support of the additional charge(s) there is submitted the following factual allegation(s) in addition to those set forth in the order to show cause and notice of hearing:

9. You were convicted in the Criminal Court of Trapani, (Italy) August 23, 1949, for the crime of fraud, which sentence was affirmed by the Court of Appeals of Palermo, Italy, Nov. 24, 1951.
10. You were convicted in the Criminal Court of Palermo, (Italy) on Nov. 8, 1947, for the crimes of forgery and fraud, which sentence was modified and affirmed by the Court of Appeals of Palermo, Italy, July 17, 1948.
11. You were convicted in the United States District Court for the District of Alaska, October 17, 1966, of knowingly and willfully causing to be made, passed and altered, a false statement in violation of Title 13, U.S.C. Sec. 1010.

Aug. 29, 1968

(Date)

B. G. Greenwald

Trial Attorney

U.S.I.N.S.

Seattle, Wash.

United States Department of Justice  
Immigration and Naturalization Service

File: A17 038 159—Seattle, Washington

In Deportation Proceedings

In the Matter of

Vincenzo Pianetti also known as  
Vincenzo Di Paola or Joseph Vincent Agosto

Respondent

[Apr 11 1973]

Charges:

Order:

Sec. 241(a)(2), I & N Act [8 U.S.C.A. 1251(a)(2)]—Entry without inspection.

Lodged:

Sec. 241(a)(1), I & N Act [8 U.S.C. 1251(a)(1)]—Alien excludable at entry, convicted of a crime involving moral turpitude.

Application:

Section 245, I & N Act [8 U.S.C. 1255], adjustment of status to permanent resident; Section 212(h), I & N Act, waiver of excludability, crime involving moral turpitude prior to entry; Section 212(i), I & N Act, waiver of excludability for procuring entry by fraud or misrepresentation; Section 244(a), I & N Act, suspension of deportation; Section 241(f), I & N Act, nondeportable for misrepresentations at entry because of quali-

fyng United States citizen relatives; Section 244(e), I & N Act, voluntary departure in lieu of deportation; Section 243(h), I & N Act, temporary withholding of deportation because of persecution if returned to Italy to face bigamy charge.

In Behalf of Respondent:

Robert S. Bixby, Esq.  
30 Hotaling Place  
San Francisco, California 94111  
Robert G. Kerr, Esq.  
9615 Bridgeport Way, S. W.  
Tacoma, Washington 98402

In Behalf of Service:

B. G. Greenwald  
Trial Attorney  
Seattle, Washington

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DECISION OF THE UNITED STATES  
IMMIGRATION JUDGE

This is a deportation proceeding under the provisions of Section 242 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C.A. 1252) and implementing regulations, 8 C.F.R. 242.

The respondent is a 45-year old married male, a native and citizen of Italy. There are three primary issues concerning the question of deportability. First, the jurisdictional issue of the respondent's identity as an alien, Vincenzo Pianetta aka Vincenzo Di Paola, a native of Italy, or Joseph Agosto, the son of Arcangelo Agosto and Carmella Todaro, a native of

Cleveland, Ohio, and, therefore, a citizen of the United States, or Joseph Agosto, the son of Angelica Porrello and an unknown father, born in Ohio about 1924 or 1925 and brought to Italy at age 2½. If his claim to citizenship should prevail, the United States Immigration Service has no jurisdiction and the proceedings should be terminated.

Secondly, if he is found to be Vincenzo Pianetti, he is an alien. The Service has jurisdiction and has the burden of establishing by clear, convincing and unequivocal evidence that the facts in the Order to Show Cause are sufficient in law to sustain an order of deportability.<sup>1</sup> The facts and charges in this proceeding have been alleged in the Order to Show Cause<sup>2</sup> and in a lodged charge<sup>3</sup> during the hearing.<sup>4</sup>

The United States Immigration Service charges the respondent with being deportable under the provisions of Section 241(a)(2) of the Immigration and Nationality Act of 1952 as an alien who entered the United States without inspection by a United States Immigration Officer and under the provisions of Section 241(a)(1), Immigration and Nationality Act [8 U.S.C. 1251(a)(1)], as an alien who was excludable at entry under the provisions of Section 212(a)(9) [8 U.S.C. 1182(a)(9)], an alien convicted of a crime involving moral turpitude.

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<sup>1</sup>Woodby v. Immigration and Naturalization Service, 385 U.S. 276, 87 S.Ct. 483, 17 L. Ed. 2d 362 (December 12, 1966).

<sup>2</sup>Exhibit No. 1, Transcript page 4.

<sup>3</sup>Exhibit No. 35, Transcript page 140.

<sup>4</sup>8 C.F.R. 242.16(d).

The respondent has applied for ancillary relief from deportation under Section 245 of the Immigration and Nationality Act to become a permanent resident alien, together with a waiver of excludability under the provisions of Section 212(h) because of conviction of a crime involving moral turpitude prior to entry, and under the provisions of Section 212(i) for procuring entry by fraud or misrepresentation since he is the spouse of a United States citizen and parent of a United States citizen child and, therefore, eligible for an immigrant visa. This, as well as other relief requested herein, is discretionary with the Attorney General, except nondeportability under Section 241(f).

He also seeks suspension of deportation under the provisions of Section 244(a) of the Immigration and Nationality Act and a finding that he is within a non-deportable class of aliens under the provisions of Section 241(f) of the Immigration and Nationality Act because of his qualifying United States citizen relatives and his fraud or misrepresentation at the time of entry. In lieu of the foregoing, he also requests voluntary departure without an order of deportation under the provisions of Section 244(e) of the Immigration and Nationality Act. As a last resort, he requests a temporary withholding of deportation under the provisions of Section 243(h) of the Immigration and Nationality Act, as amended, on the claim that he would be persecuted if he were to return to Italy since he is wanted there as a fugitive from justice and for possible prosecution for bigamy.

Each of these issues will be considered seriatim following a brief historical background of the case.

The proceeding was commenced by the issuance of a warrant of arrest and on September 5, 1967, of an Order to Show Cause and Notice of Hearing. The respondent was then in the Federal Penitentiary at McNeil Island. Following his release from the Penitentiary, he came into the custody of the United States Immigration Service. The first hearing was had in the Pierce County Jail, Tacoma, Washington. The respondent was then detained in lieu of a \$7,500 appearance bond. He could not raise the money for this bond and his attorney appealed for a reduction which the District Director granted and he was released from custody.

Deportability has been decided in this case by a written decision of the Special Inquiry Officer on two occasions. Each time the Board of Immigration Appeals has returned the case to the Special Inquiry Officer for further hearing to consider additional evidence and to allow the respondent to apply for additional discretionary relief.

The jurisdictional question of whether the respondent is a citizen of the United States has never been decided by the Board of Immigration Appeals. The delay in returning the case to the Board of Immigration Appeals is the result of a protracted investigation conducted by the Investigations Division of the United States Immigration and Naturalization Service as a result of his multiple applications for discretionary relief from deportation.



The first question to be resolved is one of identity. Who is the respondent? The United States Immigration and Naturalization Service claims he is Vincenzo Di Paola Pianetti, born in the City of Agrigento, a city on the southern coast of Sicily.

Exhibit 65 is an Italian document with a certified translation, authenticated<sup>5</sup> through the Italian officials and the American Consulate,<sup>6</sup> November 26, 1971. This Italian record of the Province of Agrigento, Italy, certifies that in the Register for the Reception of Foundlings in the year 1927 of the Provincial Institute of Assistance to Infancy of Agrigento, the following entry, No. 104, appears:

"July 16, 1927, 4:00 a.m., Vincenzo Di Paola, male, consigned on August 26, 1927, to Crocifissa Porrello, wife of Pietro Pianetti, from Sciacca, Railroad Station—Rosaria Ceraulo, Racalmuto—Born recently in good state of health."

The record did not say who consigned the child to the foster parents.

An Italian document (Ex. 64), translated into English, recites that on the 18th of July at 11:50 a.m. in the year 1927 at the City Hall before the official Registrar of the City of Agrigento, appeared a handywoman, a resident, who declared to the Regis-

<sup>5</sup>Authenticated or certified foreign documents are admissible in evidence, *Ventura v. Shaughnessy*, 219 F.2d 249. Even if not authenticated or certified they may have probative value if uncontradicted, *Smith v. Curran*, 12 F. 2d 636; *Impasto v. O'Rourke*, 211 F. 2d 609, 8th Circuit, 1953, cert. den. 348 U.S. 827; *Williams v. Mulcahey*, 250 F. 2d 127, 6th Circuit, cert. den. 356 U.S. 946.

<sup>6</sup>Italian documents authenticated on reverse.

trar that at 4:00 a.m. on the 17th of July in a house situated in Via Oblati, a male child was born of a woman, who does not want to be named; that the child was presented and given the name of Vincenzo and the surname of Di Paola. As witness to this entire compilation of the birth certificate, two male residents of the city were named. The child was sent to a foundling home in care of the declaring handywoman, Giuseppa Calleo, together with a copy of the document for the Mother Superior. The record was read to the people present, who signed in the presence of the Registrar that it was a true copy (record). It was declared to be a true copy of the original recorded document requested for the use of the American Consulate General at Palermo. There were marginal notes later recorded on the certificate that were translated into English, showing that Vincenzo Di Paola, the foundling, was affiliated by Pietro Pianetti and Crocifissa Porrello by a Judge in Licata, April 15, 1943, approved February 12, 1944, and recorded in the registry of births of 1944 in Agrigento, March 11, 1944. Another note shows that Vincenzo Di Paola now Pianetti was married to Vicis Vinci Anna Pasqua on November 19, 1944, in the City of Palermo.

Exhibit No. 4 is an extract and summary of a birth certificate for the year 1927, Part I, No. 461, dated September 22, 1967, relating to Vincenzo Di Paola. It is authenticated by the custodian of the records of the Civil Registrar of Agrigento and the signatures of the custodians and other officials are identified by the American Consul General in Palermo. It recites



that the records for the year 1927, referring to the part and number in Exhibit No. 64, previously described, show that Vincenzo Di Paola, male, born in Agrigento in Via Oblati, at 4:00 of July 17, 1927, was affiliated by the married couple of Pietro Pianetti and Crocifissa Porrello and was given the name of Vincenzo Pianetti by order of the Surrogate of Licata, and that Vincenzo Pianetti presented a copy of his birth certificate on November 19, 1944, when he was married in Palermo to Anna Pasqua Vinci Vicis.

Exhibit No. 5 is another record entitled "Birth Certificate, Bureau of Civil Registry, Municipality of Agrigento," signed by the Registrar of Vital Statistics, April 5, 1967, and authenticated by various Italian officials and the American Consulate, shows an examination of the same records, contains the same information relating to the birth and identity of Vincenzo Pianetti, born July 17, 1927.

Exhibit No. 6 is an extract from the Registers of Marriage Records for the Municipality of Palermo. This is an Italian document with an English translation, authenticated by the custodian of the Italian records together with the American Consulate General at Rome, Italy, describes that the Registers of Marriages for Palermo for the year 1944 shows that Vincenzo Pianetti of Pietro Pianetti and Crocifissa Porrello, 17 years of age, born in Agrigento, and Miss Anna Pasqua Vices Vinci, of Emanuele and Maria Di Leva, born in Naples, 23 years of age, were married November 19, 1944, and the record was made in accordance with the requirements of law.

Exhibit No. 7 is a record of the Municipality of Rome, Vital Statistics Department, relating to family status. It describes the family of the respondent's wife, showing that she was married to Vincenzo Pianetti in Palermo. It shows that a daughter, Flora Pianetti, was born in Palermo, October 30, 1946, and that another daughter, Crocetta Giocanda Pianetti, was born in Palermo, July 21, 1945.<sup>7</sup>

The foregoing is only part of the documentary evidence that identifies the respondent as Vincenzo Pianetti, an alien, and native of Italy. There is much more cumulative evidence, such as Exhibit No. 22, relating to the respondent's baptism several days after his birth, and his marriage certificate, Exhibit 23, together with records of his origin recited in criminal records to be referred to later in deciding another issue. (See Ex. 37, 38, 39, 50, 51, 52.)

It is clear from the entire record that the respondent when apprehended by the U.S. Immigration Service claimed to be Joseph Agosto, born at Cleveland, Ohio, August 30, 1921, son of Arcangelo Agosto and Carmela Todaro. As evidence of his claimed identity he presented a birth certificate of Giuseppe Agosto, whose name he is now using (See Ex. 3 and 24). This birth certificate was a delayed birth certificate registered with the Bureau of Vital Statistics, January 13, 1930, and the certified copy, issued by

<sup>7</sup>See the affidavit of the respondent's wife, Anna Vices Vici Pianetti, before the American Consul, July 14, 1967 (Ex. 9); sworn statement of his daughter, Crocetta Gioconda Pianetti (Ex. 10), all of which is corroborative of the Italian records and the identity of the respondent as Vincenzo Pianetti.

the Bureau of Vital Statistics for City of Cleveland, on December 24, 1951, under Registrar's Certificate No. 21,767.

Now what evidence is there that this birth record is that of the respondent? The respondent testified at one time that he first learned of it in about 1948, or before he came to the United States, when it was mailed to him by an uncle in Kansas City, his mother's brother, Joseph Porrello, now deceased. His adopted father, Pietro Pianetti, testified that he told the respondent when he was about 13 or 14 years of age that he was Joseph Agosto, born in the United States. That would have been, even according to his reckoning, about 1937 or 1938. The evidence then that the respondent is the person he claims to be is his own self-serving declaration. This, of course, has little evidentiary value because the credibility of the respondent is hopelessly impaired.

The respondent, since he was sixteen years of age, has a record of deceit, double-dealing and subterfuge. The results of my observation of him during the hearing did not improve the trustworthiness of his testimony. His testimony was evasive and designed to obscure the truth. The Trial Attorney on many occasions was unable to get a forthright answer from him relating to his school record or attendance in Italy. He admitted that he was married to his wife, Anna Vinci Vicis Pasqua, at the time he was a sophomore student in high school on November 19, 1944, when he was seventeen years of age. He executed an affidavit that he had read and knew the contents of

the document and swore to this before a notary public on the 3rd of June, 1968. This was signed in an action in the *Matter of Mary Marie Agosto v. Joseph Agosto*, Answer to the Cross-Complaint in Case No. 180878 in the Superior Court of the State of Washington in and for Pierce County at Tacoma (Ex. 44). In this case his present wife, Mary Marie Agosto, sought a judgment in a friendly suit declaring her to be the lawful wife of the respondent, who had abandoned his wife in Italy and had an intervening marriage in Alaska, which was later terminated by divorce. In order to create the appearance of a regular marriage in the State of Washington, the respondent was willing to lie to the Superior Court and try to obtain a judgment on the basis of his youth and a finding that the marriage was void. This is not only an admission against interest but is a further demonstration of the respondent's disregard for truth and veracity. He was willing to use the identity of Pianetti to validate his present marriage but for immigration purposes he claimed to be Agosto, a person six years older. This happened during the pendency of this proceeding.

There is ample evidence in the record that the respondent is not the Joseph Agosto he claimed to be. There is, however, evidence to the contrary based upon certified photographic records of the U. S. Department of State, some of which were unknown to the respondent and his witnesses. Exhibit 16 is an application upon which a passport was issued on December 5, 1928, by the Department of State to the

genuine Joseph Agosto, who was living in Cleveland, Ohio, with his mother, Carmela Todaro, and his father, Arcangelo Agosto (See Ex. 16). Joseph Agosto's father executed an affidavit regarding the birth of his son and an affidavit granting his full consent for his son to travel to Italy with his mother. The passport contained a picture of Joseph Agosto.

Exhibit No. 15 contains an application by the genuine Joseph Agosto for registration as an American citizen, executed May 22, 1944, at Palermo, Italy. This was four months before the respondent married his wife, Anna Vices Vinci Pasqua, according to the evidence.

Exhibit 17 is a Certificate of the Loss of Nationality by the real Joseph Agosto, executed September 27, 1948, at Palermo, Italy, together with an application, upon which a passport was issued March 27, 1947, to the real Joseph Agosto on the ground that he had not lost his United States citizenship and had taken an oath of allegiance. This contains a signature and a picture of the real Joseph Agosto. Now compare the picture with the passport application of Vincenzo Pianetti, posing as Joseph Agosto, in an application for a passport issued July 25, 1956. It will be observed that their signature and pictures are nothing alike (See also the signature on pages 2, 3, and 5 of Exhibit 18 and compare the photograph and signature of Pianetti, posing as Joseph Agosto, on pages 7 and 8 of Exhibit 18).

The sister of the genuine Joseph Agosto executed statement before the Commissioner of Police in Licata

(Ex. 13) in which she stated that she was the sister of Joseph Agosto of the late Arcangelo Agosto and Carmela Todaro, born in Cleveland, Ohio, on August 30, 1921. She stated that he died in Licata on December 14, 1951. She stated that he had embarked on an engineering career at the University of Palermo but did not graduate because of his health. She stated that she does not know Vincenzo Pianetti but that she had learned that he was using the identity of her departed brother. The respondent was offered an opportunity to cross-examine this sister of Joseph Agosto through deposition but never availed himself of the opportunity.

There is attached an authenticated copy, together with an English translation of the municipal records of Licata, Bureau of Civil Registry, recording Giuseppe Agosto as having died December 14, 1951, describing that he was born in Cleveland, Ohio, of the late Arcangelo and Carmela Todaro Agosto. It was just prior to this time that the respondent, Vincenzo Pianetti, embarked for Canada with an Italian passport under his own name. Shortly thereafter, on December 24, 1951, the Bureau of Vital Statistics for the City of Cleveland issued a birth certificate of Joseph Agosto, under Registrar's No. 21767, a photostatic copy of which was presented by the respondent, Pianetti, as his birth certificate. Respondent did not answer with candor the questions relating to his entry into the United States, although he did admit he had never been examined or admitted as an alien and he did testify that he entered the United States from Mexico.



Exhibit No. 27 is statement made by Gaspare Porrello, the brother of Crocifissa Porrello Pianetti, the adoptive mother of the respondent, Vincenzo Pianetti. In this statement it is recited that he knows Vincenzo Pianetti and identifies him as a person born on the 17th of July, 1927, in Agrigento, but he also knows him as the Joseph Vincent Agosto, the son of Arcangelo and Carmela Todaro, born in Cleveland, Ohio, on August 30, 1921. He then describes this same Joseph Agosto as the son of Angelica Porrello, who died in America, all of which is very confusing, granted it is hearsay. He said he learned that Pianetti was called Joseph Agosto in 1951 when Pianetti emigrated from Italy to America and that, after a few years in America, Vincenzo Pianetti, wrote to him under the name of Agosto and told him he had changed his name and gave him the information relating to Agosto as indicated in the beginning of the exhibit. In fact, all that he had learned about Vincenzo Pianetti's being Joseph Agosto came from the respondent, himself, after he had assumed the identity of Agosto.

The Government, after an exhaustive investigation in Italy, obtained not only overwhelming documentary evidence from Italian records that he was Pianetti, a native of Italy, but also overwhelming documentary evidence from the American Consul in Palermo, the State Department, and the Italian records and relatives of the true Joseph Agosto that he could not possibly be the Joseph Agosto, a native of Cleveland, Ohio, born August 30, 1921, who died in Italy a month after the respondent, Pianetti, departed from Italy with the Italian passport.

Before the Board of Immigration Appeals, counsel for the respondent requested a reopening of the hearing to produce the adopted parents of the respondent from Italy. They were presented and testified during the hearing. Their testimony was that Vincenzo Pianetti was the illegitimate child of Angela or Angelica Porrello, the sister of Crocifissa Porrello Pianetti; that he was born in the United States; and that his mother, Angelica Porrello, sent him to live with them in Italy when he was about two or three years of age. Their testimony did not vary much in detail. In fact, their recollection of the child's coming to Italy was lacking in detail. They had no explanation for the fact that all of the public records in Italy were contrary to their testimony except for the vague insinuation by his adoptive mother that her father may have had the records created, trying to save the family from shame because he was an illegitimate child. The record of the birth of Joseph Agosto, who the respondent claims to be, does not reveal this Joseph Agosto is illegitimate. Furthermore, the opposite would be true because the records alleged to have been created show him to be an illegitimate foundling by a mother who refused to acknowledge or accept him. The more logical action for his grandfather would have been to have spread on the records the date and place of his U. S. birth or for him to register with the American Consul, which would have made him legitimate, insofar as Italian records were concerned. The birth record of the person he claims to be, Joseph Agosto, was not recorded until 1930, some eight years after the birth (See Exhibit 24).



The testimony of the respondent's witnesses shows that he learned that he was Joseph Agosto at various times. This would have been a long time before he was married and it would have been unnecessary to declare to the Italian officials that he was Vincenzo Pianetti. Respondent, Pianetti, testified that his uncle, Joseph Porrello from Kansas City, sent him the birth certificate after 1948 and before he came to this country (November 1951). This would not be possible because the records show that the birth certificate was not issued until the 31st of December, 1951 (See Ex. 24), and Vincent Pianetti had already arrived in Canada on his way to the United States, November 23, 1951, claiming to be 24 years of age (which would place his birth about 1927).

If he had the birth certificate as Joseph Agosto prior to leaving Italy, he could have obtained a passport as an American citizen and entered the United States rather than entering Canada with an Italian passport and then going to Mexico and coming to the United States without inspection as an alien.

The birth certificate of Joseph Agosto (Ex. 24), born in Cleveland, Ohio, in 1921, which respondent used as the basis for obtaining a passport as a United States citizen, shows a person by the name of Salvatore Agosto as the father and Carmela Todaro as his mother. Carmela Todaro Agosto issued an affidavit correcting the certificate to show the father's name to be Arcangelo Agosto. The respondent's adoptive parents both testified that the mother's name was Angelica Porrello. The birth certificate upon

which the respondent claims to be Joseph Agosto actually was never identified as pertaining to him except by the most remote hearsay.

The best evidence is the recorded declarations made before the controversy in this case arose. These declarations were properly recorded and preserved as public records. The oral testimony of witnesses to the contrary is tainted by their interest in the outcome of the issues. It is also pertinent to observe that his adoptive parents, although residing in Italy, could have come forward with the information they had about Joseph Agosto in 1967 when the Immigration Service was investigating rather than waiting until 1972. There is absolutely no reliable evidence that the two and a half year old boy they met at the boat in 1925, brought to Italy by persons whom they did not know and now do not remember, was the Joseph Agosto, born in Cleveland, Ohio, in 1921. If this were so, he would have been four years old.

At the reopened hearing the respondent presented the testimony of a witness from Akron, Ohio, by the name of Ripolino (Transcript, p. 387). Examination of Ripolino's testimony discloses that all he knows about the identity of Joseph Agosto is what the respondent, Pianetti, told him. He admitted this on cross-examination. It is also interesting to note that the Ripolino who testified is the youngest member of the family. There is no evidence from his older brother nor is there any explanation as to whether there are other living collateral relatives who might be in possession of the facts.

Always adept at obfuscation the respondent then changed his tactics to try to confuse the record to show that he was a Joseph Agosto, born in the United States as an illegitimate child of his adopted mother's sister, born in about 1923 or 1924, although it was difficult to determine just when he was born under this obscure claim. However, I believe we could rely on the statement made by his attorney on the record (Transcript, page 503, line 15):

"\* \* \* realizing that the only way anyone knows when they were born is what they have been told, it is our position that he was not born in 1927; that he was born at some time earlier than that. From what has been told to him and witnesses that have testified in this case, it would appear from the statements now, the testimony of Mr. and Mrs. Pianetti and from Mr. Ripolino, that the date would be in 1924—closer to 1924 than 1921."

So it can be stated without fear of contradiction by the respondent that he was not the Joseph Agosto born in Cleveland, Ohio.

I do not know of what evidentiary value the birth certificates placed in the record, Exhibits No. 60 and 61, were as none of them refer to anyone by the name of Joseph Agosto. None of them show that Angelica Porrello was his mother, and none of the witnesses could testify relating to them except Mr. Ripolino, who stated that the only thing he knew about any relationship to Pianetti was what the respondent told him.

I have concluded that all the adoptive parents testified to about the respondent is what they were told to say, just as his adopted mother's brother was coached by the respondent as he admitted in Exhibit No. 27, a statement of Gaspare Porrello to the police authorities in Italy.

On the basis of all the foregoing evidence, weighed and examined, I find the respondent is Vincenzo Pianetti, also known as Di Paola, a native of Italy and an alien. The United States immigration laws apply to the respondent, Pianetti, and the jurisdictional question is resolved.

Deportability on Charge in Order to Show Cause,  
"Entry Without Inspection"

Having resolved the jurisdictional question, we now come to the question of deportability on the issue raised in the Order to Show Cause: Did the respondent enter the United States without inspection as an alien and is he, therefore, deportable under the provisions of Section 241(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1251(a)(2)]? This statute reads as follows:

"Section 241. (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—  
\* \* \* (2) entered the United States without inspection \* \* \*"

The respondent has denied all the allegations in Order to Show Cause with the exception of Allegations No. 6, 7, and 8. He, therefore, admits in those

allegations that in about December 11, 1966, he did not present himself for inspection as an alien when he entered the United States. This is corroborated by Exhibit 48 when Pianetti used a United States passport, posing as Joseph Agosto, who was born in 1921, at Cleveland, Ohio. An Immigration stamp in this passport shows that he was admitted as a United States citizen at New York, New York, October 15, 1966. Under this procedure, of course, he was not inspected as an alien. Furthermore, on the record he admitted that he had never been inspected or admitted to the United States as an alien.<sup>8</sup>

It is significant to note that, when the respondent had his first hearing in 1967, although under oath, he was evasive about his entry into the United States although he admitted that he entered without inspection.<sup>9</sup>

During his second hearing<sup>10</sup> he testified he made his first entry into the United States around 1950 from Mexico. He came to Canada from Italy via Air France, landing in Montreal. At that time he had a passport under the name of Vincent Pianetti. This is corroborated by the document from the Canadian Immigration giving the data relating to his arriving in Canada at that time as a visitor.<sup>11</sup> The respondent claimed that the Italian Consul had a copy of this passport and that he would make it available to the

<sup>8</sup>Transcript, page 8, lines 11-14.

<sup>9</sup>Transcript, page 27.

<sup>10</sup>Transcript, page 83.

<sup>11</sup>Exhibit 42.

Government within a week but the passport was never made available. He testified that he stayed in Canada two or three months because he was planning to live in Canada at first. His attorney asked him whether he was contending at the time he lived in Canada that he was a United States citizen and he answered, "No, I didn't contend that because I did not have yet the final proof or circumstances, information of my birth, which I was able to achieve upon conducting my investigation on arriving in the United States at a later date." This, of course, doesn't follow from his other testimony because he had received the birth certificate from his uncle (Ex. 24) showing Joseph Agosto to be a United States citizen and this is the document with which he entered the United States as a United States citizen when he crossed the border from Mexico. (See colloquy between attorney and the respondent, pages 84 and 85.) His testimony is inconsistent also in the respect that he was coming to Canada to stay and then, because he didn't like Canada, he was going to Mexico because he had already stated that his intended purpose was to come to the United States to inquire about his origin. The truth is that he was and is a fugitive from justice and had a prison sentence to serve in Italy. He has also admitted in the record that he did not go to the U.S. Consulate in Palermo and obtain a United States passport because he knew that the real Joseph Agosto was recorded at that Consulate at one time as having lost his United States nationality. He evidently did not know that the true Joseph Agosto had



been subsequently granted a passport as a United States citizen. The records of the genuine Agosto in the United States Consulate at Palermo would have uncovered the fact that the respondent was an imposter.<sup>12</sup>

The respondent is deportable under the provisions of Section 241(a)(2) [8 U.S.C. 1251(a)(2)] as an alien who entered the United States without inspection as an alien by United States Immigration Officers.

#### Deportability on Charge Lodged at the Hearing

During the reopened hearing the Government lodged an additional deportation charge. This charge was lodged under Section 241(a)(1) of the Immigration and Nationality Act [8 U.S.C. 1251(a)(1)], which provides as follows:

"Section 241. (a) Any alien in the United States, including an alien crewman, shall, upon order of the Attorney General, be deported who— (1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry \* \* \*

The class of excludable alien specified was Section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182), which reads as follows:

"Section 212(a). Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission to the United States;

<sup>12</sup>Transcript, page 45, lines 11-26.

\* \* \* (9) aliens who have been convicted of a crime involving moral turpitude \* \* \*

In support of this charge the Government named two crimes in Italy and one in Alaska. It was alleged that he was convicted in Italy, November 8, 1947, of crimes of forgery and fraud and that the conviction was affirmed by the court of appeals (Ex. 35); that he was convicted in Italy, August 23, 1949, for the crimes of fraud, and that on October 17, 1966, he was convicted of knowingly and willfully causing to be made, passed and uttered a false statement in violation of Title 18, U.S.C., Section 1010.

The applicable definition of moral turpitude, as enunciated in numerous administrative and judicial decisions, includes anything done contrary to justice or an act of baseness in the private and social duties which a man owes to his fellow man or to society in general.<sup>13</sup> The Immigration Judge need only consider the record of conviction and apply the prevalent standards of what constitutes moral turpitude to reach his conclusion.<sup>14</sup> The Supreme Court in *Jordan v. De George* said: "In deciding the case before the court we look to the manner in which the term 'moral turpitude' has been applied by judicial decision. Without exception, Federal and state courts have held that a crime in which fraud is an ingredient involves moral turpitude."

<sup>13</sup>37 Op. Atty. Gen. 293, 294.

<sup>14</sup>*De Lucia v. Flagg*, 297 F.2d 58, 1961; cert. den. 369 U.S. 837.



The last criminal offense charged in the Order to Show Cause, stated as an allegation of fact in Allegation No. 11, will be considered first (Ex. 35). A certified copy of the record of conviction was admitted in evidence as Exhibit 41, including the indictment, judgment, sentence, revocation of probation and commitment. The respondent was convicted under Count II of the indictment which stated in substance, that about May 28, 1962, the defendant, Joseph V. Agosto, for the purpose of obtaining for others a loan from a bank in Anchorage, Alaska, to be insured by the Federal Housing Administration, did willfully cause to be made, passed, uttered and published a false statement in an earnest money agreement that the purchasers of the property had an equity of \$2,500 in the property; that the defendant, Joseph V. Agosto, knew that they did not have any equity in the property or any other amount of money sufficient to qualify for a Federal Housing Administration insured loan.

The statutory language does not include intent to defraud as an element of the offense. The mere making of the false statement, knowing it to be false, in support of an application for Federal Housing Administration mortgage insurance, constitutes the offense. A false statement, not made under oath, which does not require a fraudulent or evil intent to sustain a conviction, does not involve moral turpitude.<sup>15</sup> It is concluded that the conviction is not one involving moral turpitude.

<sup>15</sup>*Hirsch v. Immigration and Naturalization Service*, 208 F.2d 563, C.A. 9, 1962; *Matter of Espinosa*, 10 I & N Dec. 98.

We will now pass to the other criminal offenses alleged in the Order to Show Cause. The Government alleged in support of the additional charge of deportability (Ex. 35, Allegation #9) that the respondent was convicted in the criminal court of Tripani, Italy, August 23, 1949, for the crime of fraud, which sentence was affirmed by the court of appeals of Palermo, Italy, November 24, 1951. There was introduced into evidence in support of this conviction the abstract of a decision on appeal (Ex. 37, copy of Italian court record certified or authenticated by the Vice Consul of the United States, and an English translation of the Italian language document). This document recites that Vincenzo Pianetti, born in Agrigento, July 17, 1926, was an appellant against the decision of the criminal court at Tripano on August 23, 1949, for the crime of fraud. The decision of the lower court was sustained on appeal. He was at that time sentenced to imprisonment for ten months for the crime of fraud and the sentence was suspended for five years. In addition to the copy of the abstract of the appellate court's decision, a copy of the complete decision of the court was presented by the respondent and admitted in evidence together with an English translation as Exhibit #51. The decision describes the crime committed by Pianetti as aggravated swindling. The court sets forth the fact of swindling in that Pianetti obtained suits at a reduced cost by the use of forged documents where the employees of the swindled company relied on the deceit to the detriment of the company. The court further stated that the swindle was perpetrated by

fraudulent methods. Because the element of fraud is an essential element and inherent in the 1949 conviction, the offense involves moral turpitude. Swindling in Italy has been held to involve moral turpitude.<sup>16</sup> Whether a crime committed in a foreign jurisdiction involves moral turpitude must be determined by the standards prevailing in the United States.<sup>17</sup>

The remaining crime to be considered is described in Allegation No. 10 (Ex. 35). It states: "You were convicted in the criminal court of Palermo (Italy) on November 8, 1947, for the crime of forgery and fraud which sentence was modified and affirmed by the court of appeals of Palermo, Italy, July 17, 1948." Exhibit 39 is a copy of the Italian court record duly certified and authenticated by the Vice Consul of the United States at Palermo, Italy, together with an English translation. The abstract of decision No. 495 of the court of appeals at Palermo, Italy, shows that that court reviewed the judgment of the criminal court of Palermo, Italy, dated November 8, 1947. The judgment of the Palermo court sentenced the respondent, Pianetti, to eleven years and two months' imprisonment and a fine of 7,000 lira for forgery of public documents and aggravated fraud. On appeal the court of appeals found that all the forgeries considered by the lower court constitute one single crime of repeated forgery committed by Pianetti and his accomplice, and assessed the penalty as imprisonment

<sup>16</sup>*Matter of M-*, 9 I & N Dec. 132, 1960.

<sup>17</sup>*Mercer v. Lance*, 96 F.2d 122, C.A. 10, cert. den. 305 U.S. 611; *McKenzie v. Savoretti*, 200 F.2d 546, C.A. 5; *Matter of M-*, 9 I & N Dec. 132.

for two years and eight months. It confirmed the penalty fixed by the lower court at imprisonment for one year and one month and a fine of 4,000 lira for repeated fraud, and assessed the penalty of imprisonment for two months for usurpation of public functions. Other violations, misdemeanors, considered by the lower court, the appeals court recited, were covered by an amnesty. This is not material to a decision in this case.

The complete decision on appeal was admitted into evidence as Exhibit No. 52. An English translation was prepared by the Division of Languages of the United States Department of State which gives a more detailed account of the offenses. It refers to continued and recurrent acts of forgery and fraud relating to public documents by the respondent. Forgery of public documents in Italy has been held to be a crime involving moral turpitude under Section 476 of the Italian Criminal Code of 1930.<sup>18</sup> The same section was considered by the court of appeals in the respondent's case (Ex. 52, English translation). The crime, therefore, is one involving moral turpitude.

The respondent's defense to the criminal charges lodged during the reopened hearing ineffectively challenged the Italian court records and the English translation. He offered no affirmative evidence of probative significance.

He argued that, if he was Vincenzo Pianetti as the Government claims, he would have been a minor

<sup>18</sup>*Matter of M-*, 9 I & N Dec. 132, 139.



at the time he was involved in the criminal activities in Italy. The mere fact that the respondent was a minor at the time the crimes established herein were committed does not insulate him from deportation because of the conviction.<sup>19</sup> There is nothing in the record to establish that the respondent was even considered a juvenile. Where local law treats him as an adult despite his age and he was prosecuted for a crime, he is amenable to deportation.<sup>20</sup> No evidence was presented by the respondent other than the bare statement that he was a juvenile at the time of his convictions in Italy. The appellate review of the records does not mention it, nor does his criminal record (Ex. 11). The facts are as follows: The respondent was almost twenty when he was convicted November 8, 1947 (Ex. 11). He was nineteen when the crimes were committed from October to December, 1946 (Ex. 52, translation p. 2).

There was admitted in evidence as Exhibit 50 a statement from an Italian attorney that no moral turpitude inheres according to Italian law in the crimes attributed to Pianetti. This is a mere conclusion and is immaterial, since, as it has been previously stated, the law of the United States controls the question of whether or not the crimes involve moral turpitude.

Based upon all the evidence presented during the first and the reopened hearing I find it has been

<sup>19</sup>*Circelli v. Sahli*, 216 F.2d 33, C.A. 7, 1954, cert. den. 348 U.S. 964; *Adams v. U.S.*, 299 F.2d 327, C.A. 9, 1962; *Hernandez v. Rosenberg*, 304 F.2d 639, C.A. 9, 1962.

<sup>20</sup>*Matter of C—M—*, 9 I & N Dec. 487, 1961.

established by clear, convincing and unequivocal evidence that the respondent is deportable under the provisions of Section 241(a)(1) of the Immigration and Nationality Act as an alien who was excludable at entry under the provisions of Section 212(a)(9) because of conviction of crimes involving moral turpitude, to wit, forgery and fraud, on the charge lodged during the hearing. He is not deportable under that charge for the crime of uttering a false statement in the Federal Housing Administration transaction.

#### Application For Ancillary Relief From Deportation:

The respondent has applied for relief under the provisions of 241(f) of the Immigration and Nationality Act, which reads as follows:

"The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or an alien lawfully admitted for permanent residence."

The respondent evidently ignored the statutory injunction saying that the insulation from deportation provided for under this provision of law applies only to aliens who are otherwise admissible at the time of entry. As pointed out heretofore, the respondent was found inadmissible to the United States under



the provisions of Section 212(a)(9) of the Immigration and Nationality Act because he had been convicted of a crime involving moral turpitude prior to entry, including any entry he has made into the United States. Contrary to the respondent's claim, the courts have construed the foregoing provision of law as relating to qualitative causes of excludability.<sup>21</sup>

The respondent cannot meet the requirements of the statute as interpreted in the *Matter of Lee*, supra. The Ninth Circuit Court of Appeals in a recent decision has followed the decision of the Attorney General in the *Matter of Lee*, supra, and held that Section 241(f) does not free from deportation those who entered the United States without inspection.<sup>22</sup> The respondent has admittedly done this on various occasions by circumventing the visa issuing process upon a knowingly false claim to United States citizenship. There are no Circuit Court decisions to the contrary, but two Circuits support the position.<sup>23</sup>

I find, therefore, that for both of the reasons stated above, the respondent is not in the non-deportable class mentioned in Section 241(f) of the Immigration and Nationality Act.

<sup>21</sup>*Immigration and Naturalization Service v. Errico*, 385 U.S. 214, 17 L.Ed.2d 318, 87 S.Ct. 473 (1966); *Scott v. INS*, same citation; *Matter of Lee*, Interim Decision, 1960 (A.G. 1969); *Lee Fook Chuay v. INS*, 439 F.2d 244 (9th Circuit, 1971); *U. S. v. Osuna-Pecos*, 443 F.2d 907 (9th Circuit).

<sup>22</sup>*Monarrez-Monarrez v. INS*, — F.2d — (9th Circuit 72-1397, December 21, 1972).

<sup>23</sup>*Franti v. INS*, 399 F.2d 98 (6th Circuit, 1968); *Tsaconas v. INS*, 397 F.2d 946 (6th Circuit, 1968).

The respondent has applied for withholding of deportation under the provisions of Section 243(f) of the Immigration and Nationality Act. During his first hearing in 1968 he designated Italy as the country to which he wished to go in the event he was deported from the United States. During his last hearing he applied for the withholding of deportation on the grounds that if returned to Italy he would be subject to persecution because they would prosecute him for bigamy. Prosecution for crimes or restriction because of prior criminal activity is not persecution contemplated by the statute.<sup>24</sup>

Eligibility for adjustment of status to that of a permanent resident under the provisions of Section 245 of the Immigration and Nationality Act of 1952.<sup>25</sup> This Act provides:

"(a) The status of an alien, other than an alien crewman, *who was inspected and admitted* (emphasis supplied) or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is approved."

<sup>24</sup>*Sheng v. INS*, 400 F.2d 678 (9th Circuit, 1968), cert. den. 393 U.S. 1054 (1969); *Matter of Sun*, 11 I & N 872 (1966); *Matter of Nagy*, 11 I & N 888 (1966); *Kalatjis v. Rosenberg*, 305 F.2d 249 (9th Circuit, 1962).

<sup>25</sup>8 U.S.C. 1255.

Relief under this section of law is not available to those aliens who enter the United States by willfully making a false claim to American citizenship and eluding inspection as the respondent did in this case.<sup>28</sup>

As we have previously pointed out, the respondent is inadmissible to the United States under the provisions of Section 212(a)(9) of the Immigration and Nationality Act for the conviction prior to entry of a crime involving moral turpitude. He would, therefore, be unable to qualify for adjustment under the provisions of Section 245 of the Immigration and Nationality Act because he is ineligible for a visa under Section 212 of the Act. He cannot be relieved of inadmissibility arising out of the criminal charge under Section 212(a)(9) of the Act because it is only available to one who is eligible for adjustment under the statute [8 C.F.R. 245.1(f)], which reads:

"Except as provided in Parts 235 (relating to applications for admission to the United States at a port of entry) and 249 of this chapter (which relates to the creation of a record of entry for aliens who entered the United States prior to June 30, 1948), an application under this part shall be the sole method of requesting the exercise of discretion under sections 212 \* \* \*, (h), \* \* \* of the Act, insofar as they relate to excludability of an alien in the United States."

The respondent is ineligible because he entered without inspection. It is concluded, therefore, that

<sup>28</sup>*Matter of K—B—N—*, 9 I & N 50 (1960); *Matter of S—*, 9 I & N 599 (1962); *Matter of Woo*, 11 I & N 706 (1966); *Matter of Wong*, 12 I & N 733 (1968); *Hung v. INS*, 380 F.2d 336, 337 (1st Circuit, 1967), cert. den. 387 U.S. 975.

the respondent is not eligible for adjustment of his status to that of a permanent resident under the provisions of Section 245 of the Immigration and Nationality Act and his application is denied.

Another application for relief in the respondent's case is under the provisions of Section 244(a) of the Immigration and Nationality Act [8 U.S.C. 1254(a)], which reads as follows:

"(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who applies to the Attorney General for suspension of deportation and— (1) is deportable under any law of the United States except the provisions specified in paragraph (2) of this subsection; has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence."

In examining his eligibility for relief under this provision of the statute, it is clear that he has resided in the United States continuously for seven years immediately preceding the date of his application for relief and, since he is the father of a United States



citizen child and has a United States citizen spouse and is supporting them, it is concluded that his deportation would result in extreme hardship to them.

The respondent, however, has not established that he has been a person of good moral character for a period of seven years immediately preceding the date of his application for suspension of deportation, or subsequent to May 5, 1962. A finding of good moral character is precluded in certain situations provided by statute [Section 101(f), Immigration and Nationality Act of 1952, 8 U.S.C. 1101(f)]. Paragraph (6) of that section prevents a person from establishing good moral character for the purpose of suspension of deportation, who has given false testimony for the purpose of obtaining any benefits under this Act (Immigration and Nationality Act of 1952). These false statements were made before me during each session of the deportation hearing. The respondent knowingly left Italy as Vincenzo Pianetti and entered the United States as an imposter under the identity of Joseph Agosto. He continued to assert that false claim during this deportation proceeding under oath in his testimony. This is not a case where an alien could make an honest mistake as a result of information given to him by interested relatives. He knew of his origin and identity at the time of his marriage and at the time of his convictions and at the time he applied for a passport to come to Canada. It is clear from this record that when he could not sustain his claim to be the Joseph Agosto born in Cleveland, Ohio, in 1921, he then chose to muddy

the waters by making a claim that he was the illegitimate son of his mother's sister, a claim that he could not substantiate by credible probative evidence. The only purpose for his false claim to United States citizenship was to avoid deportation, which is certainly a benefit as contemplated by Section 101(f)(6).

But this is not the only reason that the respondent has failed to establish his burden of showing good moral character for a period of the last seven years. He has been in trouble because of fraud and deceit since he was about nineteen years old. Besides the convictions in Italy, which have been enumerated, the record shows that he was convicted in Alaska of a crime, which, even if it can't be regarded as one involving moral turpitude for the purposes of Section 212(a)(9) of the Act, certainly involves deceit and sharp practices. The witnesses he presented with respect to his good moral character and reputation did not cover the statutory period nor did their knowledge of his activities qualify them to conclude that he was a person of good moral character for the statutory period.

Respondent was asked to bring in evidence of his interest in certain corporations and to specify the amount of his interest as a stockholder, together with a list of all of the law suits that he was involved in, in his own name and as a person with an interest in a corporate entity, either as an officer or stockholder (Transcript page 546). He agreed to this. Nothing of this sort has been received by the Immigration Judge.



There has been submitted a report of an investigation conducted by the Immigration and Naturalization Service. I find nothing in it that would be other than cumulative and, therefore, do not draw any adverse inferences in the writing of the decision in this case on the basis of the material submitted or referred to in the investigation. For this reason, it is unnecessary to reopen the hearing to admit it into evidence or to afford the respondent an opportunity to refute the claims made in the investigation.

The application for suspension of deportation is denied.

For the foregoing reasons, his application for voluntary departure is denied because of failure to establish good moral character and as a matter of administrative discretion.

ORDER: It is ordered that the respondent's application for a waiver of excludability under the provisions of Section 212(h) of the Immigration and Nationality Act and for permanent residence under the provisions of Section 245 of the Immigration and Nationality Act be denied.

It Is Further Ordered that the respondent's application for suspension of deportation under the provisions of Section 244(a) of the Immigration and Nationality Act and for voluntary departure under the provisions of Section 244(e) of the Immigration and Nationality Act be denied.

It Is Further Ordered that the respondent's application for withholding of deportation under the

provisions of Section 243(h) of the Immigration and Nationality Act be denied.

It Is Further Ordered that the respondent be deported from the United States to Italy on the charge contained in the Order to Show Cause and on the charge lodged during the hearing.

It Is Further Ordered that the record be certified to the Board of Immigration Appeals for final decision.

/s/ John W. Keane  
John W. Keane  
U. S. Immigration Judge